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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/667,252

09/19/2003

David R. Jones IV

24935D

1138

22889

7590

05/09/2005

OWENS CORNING
2790 COLUMBUS ROAD
GRANVILLE, OH 43023

EXAMINER

ADDIE, RAYMOND W

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/667,252

Applicant(s)

JONES ET AL.

Examiner

Raymond W. Addie

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19, 22, 39 and 40 is/are pending in the application.
- 4a) Of the above claim(s) 39, 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/19/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 39, 40 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The method in claim 39 requires specific stress-strain behavioral characteristics of the mat being used in the method of repairing a roadway and specific laboratory experimentation, such as with a 4 ounce sample of the mat used in the claimed method of repairing a road, in a combination that was not previously claimed.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 39, 40 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19, 22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Marzocchi et al. # 4,362,780.

Marzocchi et al. discloses a method of improving a paved surface comprising the steps:

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Applying a layer of liquefied asphalt on a surface.

Applying a non-woven mat over the liquefied asphalt.

Applying a layer of paving material over the mat.

Wherein the mat comprises mineral fibers.

Although Marzocchi et al. discloses a method of improving a paved surface, utilizing a mat comprising non-woven mineral fibers, such as glass, wherein the mat is resistant to shrinkage and does not elongate greater than 5% when exposed to 90% of the mats load strength, as claimed; Marzocchi et al. explicitly recites the use of glass, fusible rock or slag, ceramic or aluminum silicate fibers, which obviously, if not inherently do not elongate more than 5% when exposed to 90% of the ultimate load strength of the mat disclosed by Marzocchi et al.

With respect to Claim 22, although Marzocchi et al. does not disclose the melting point(temp.) of the mineral fibers, Marzocchi et al. explicitly recites the use of glass, fusible rock or slag, ceramic or aluminum silicate fibers. Further, it is inherent that the cited mineral fibers have a melting point above 350⁰F. See Col. 3.

Response to Amendment

3. Applicant amendment canceling claims 20, 21, 23-28 is acknowledged.

Response to Arguments

4. Applicant's arguments filed 03/02/2005 have been fully considered but they are not persuasive. Applicant argues against the reference to Marzocchi et al. by stating "Amended claim 10 and new claim 39 state the mat has a minimum...elongation...a load-elongation behavior...in the direction of applied stress". And supports the argument by suggesting "Marzocchi et al. patent discloses...the mat is described as being board-like and rigid or semi-rigid...the mat has a thickness between one-eighth inch...the mat would not have a minimum ultimate elongation of at least 5%...the invention recited in the instant claims is novel and nonobvious in view of Marzocchi et al".

However, the Examiner does not concur.

Applicant's arguments and amendments to the claims are directed to physical characteristics of the geo-textile being used. Applicant is reminded the claimed invention is "A method of improving a paved surface comprising the steps of:
applying a layer of liquefied asphalt on as surface;
applying a mat over the liquefied asphalt...
applying a layer of paving material over the mat".

Which are the actual steps being performed in the claimed method.

The fact the claimed method indirectly implies the use of a mat "comprising a nonwoven mat produced from fibers...selected from the group consisting of mineral

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fibers, polymer fibers, and mixtures thereof"; the cited limitation must be given patentable weight.

The prior art search, and subsequent rejections of the claims, based on the prior art searches, clearly demonstrates the known use of geo-composites and geo-textiles, having the claimed compositions, in methods of repairing roadways.

Hence, the performance of the claimed method is known in the art, as disclosed by Marzocchi et al.

The fact the Applicant has amended the claimed method to include specific physical characteristics and behavior under applied stress, does not appear to further limit the performance of how the method steps being claimed are performed. Hence, patentable weight afforded the cited limitation is not significant, and is not seen to affect the method steps, the order of steps or performed, nor the manner in which the claimed method steps are performed.

Further, the prior art discloses using non-woven geo-composites in that, "referring to the drawings, FIG. 1 illustrates a form of the membrane construction or product 10 comprising an asphalt-impregnated pelt, body, mass or mat of unbonded fibers being deposited on a base or substrate 12 of gravel or the like. The substrate is disposed in a suitable depression or recess in the terrain 15. FIG. 1 illustrates a roll 17 of the product 10 partially unrolled upon the substrate or base 12 forming a pavement or paved area.

2) It is to be understood that FIG. 1 is illustrative of a method of installing a single body, unit or section of the membrane construction or product 10 on the substrate. Several bodies may be disposed on a substrate covering a large area with the several bodies providing paving for highways, bridge decks, driveways, runways, parking lots or the like.

Further, Marzocchi et al. clearly discloses the geo-composites are known to be made from "fibers of amorphous glass for the body, pelt or mat of the membrane construction, it is to be understood that other fibers such as fibers of fusible rock or slag, ceramic or aluminum silicate fibers may be utilized. The fibers, and particularly if they are glass fibers, may be in the form of staple fiber, textile fibers, continuous filaments or strands of filaments, chopped strands, twisted yarns, roving or the like". Hence, it appears as though the prior art discloses a known method of repairing a roadway, utilizing a geo-composite of known composition and construction.

The fact the prior art does not disclose how the geo-composite performs under applied loads, does not appear relevant, since the method claimed does not require the behavior to occur when the mat is disposed under the layer of paving material that forms the road surface. The stress-strain relationship claimed only appears to be required in general experimentation without the benefit of the paving material transmitting some of the applied loads to the mat, which would occur in a roadway repaired using the claimed method.

Hence, since Marzocchi et al. discloses using a mat constructed from the same materials as that claimed, it would be obvious, if not inherent, the mat of Marzocchi et al., would behave in the manner required by the amendment to claim 19. Therefore, the arguments are not persuasive and the rejection is upheld.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

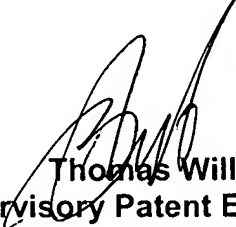
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Addie whose telephone number is (571) 272-6986. The examiner can normally be reached on Monday-Saturday from 7:00 am to 2:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (571) 272-6998.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas Will
Supervisory Patent Examiner
Group 3600

RWA
5/5/2005